

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Baldwin Analyst: Darrine Distefano Bill Number: AB 2193
Related Bills: See Legislative History Telephone: 845-6458 Introduced Date: 02-23-2000
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Biometric and Personal Information Act/Personal Identifying Information

SUMMARY

This bill would create the "Biometric and Personal Information Protection Act." It would place restrictions and regulations on the collection, retention and use of any unique individual personal identifiers (UIPIs) without specific statutory authorization or the informed consent of the persons to whom that information pertains. This bill would restrict medical personnel, governmental agencies (county, city or state, with certain exceptions for law enforcement agencies) and third parties in the collection, retention and use of the UIPIs.

EFFECTIVE DATE

This bill would become effective January 1, 2001, and operative for all provisions after that date.

LEGISLATIVE HISTORY

SB 1419 (99/00), as amended March 27, 2000, would create the "Biometric and Private Information Protection Act."

BACKGROUND

Federal and state law requires state agencies to comply with strict requirements and guidelines in the use of personal information. The Information Practices Act of 1977 (Civil Code Section 1798, et. seq.) and the California Public Records Act (Government Code Section 6250, et. seq.) provide measures to assure fair treatment of individuals who are the subject of state agency records.

These acts place specific requirements on state agencies in the collection, use, maintenance and dissemination of information relating to individuals. With exceptions, individuals may review, obtain copies, request amendments and corrections and dispute information pertaining to them in state records.

Civil remedies and penalties are provided for violations that adversely affect individuals who are the subjects of state agency records.

SPECIFIC FINDINGS

The **Revenue and Taxation Code (R&TC)** provides that information collected on income tax returns is confidential and shall be used only to administer the income tax laws. The Franchise Tax Board (FTB) may disclose information only in limited circumstances and only to specific agencies as expressly authorized by statute.

Board Position:

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_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Gerald H. Goldberg

4/19/00

The **R&TC** authorizes disclosure of confidential taxpayer information only under the following circumstances: in judicial or administrative proceedings in connection with the taxpayer's civil or criminal liability; to legislative committees; to the Attorney General for specific types of proceedings; to the State Controller for the purpose of locating the owners of unclaimed property; to the State Department of Social Services and the State Department of Health Services for the purpose of reporting unearned income; to the Student Aid Commission for the purpose of collection of student loans; to the Public Employees' Retirement System for the purpose of disbursing unclaimed benefits; and to the Parent Locator for the purpose of locating parents for child support collection. As permitted by statute, FTB has entered into a number of reciprocal agreements with the Internal Revenue Service (IRS) and other taxing authorities to share confidential taxpayer information for purposes of enforcing tax compliance.

Except as provided by statute, disclosure of income tax return information is a misdemeanor offense.

This bill would establish the "Biometric and Personal Information Protection Act." This bill contains legislative intent language finding that the use of electronic data transfer and the technical advances in biomedical identification have created an ethical and practical dilemma in the spread of private information and the violation of individual privacy. It is the responsibility of the Legislature to protect the citizens of the state of California from violations of their lawful individual privacy.

This bill would define the term "unique individual personal identifiers" (UIPIs), as any number, specifically including an individual's social security number, symbol, electronically generated or retained identifier, characteristic, physical or biological trait, genetic marker, genetic code, or any other genetic identifier, or any precise electronic, medical, biological, or biometric measurement, or determinant of any individual, or of any physical part of that individual, or of any bodily fluid or biological waste product of an individual, or any record or sample of such, or any other trait by which one individual can be uniquely identified as distinct from any other individual.

This bill would define other various terms such as "lawful individual privacy" and "informed consent."

This bill would place restrictions on the collection, exchange, retrieval, buying, selling and leasing of any medical records or any information about UIPIs of any person without obtaining the informed consent of that person. No medical personnel or physician may pass this information on to obtain goods or services. It can be used for generic, statistical, demographic collection for medical, and scientific research purposes only.

This bill would place restrictions on any governmental agency, county, city or state, on the collection, possession, processing, exchange, retrieval, accessing, retaining, storing, using, buying, selling, transferring, leasing, or disseminating in any way of any information about a UIPI of any person without obtaining the informed consent of that person. A governmental entity could be made exempt from these restrictions with specific statutory authorization permitting and defining the strictly limited collection, retention and use of that information in the absence of informed consent. Department of Corrections,

Department of Justice, California Highway Patrol and local law enforcement departments and personnel are exempted from these restrictions.

This bill would hold any third party that receives UIPIs to the highest standards of confidentiality. A public entity would not be held liable, but any person, including any officer, agent or employee of the state, would be held liable in any criminal or civil cause of action.

This bill would require any individual or public or private entity that has lawful access to UIPIs to make an affirmative, biannual written contact with every person identified by that information. The written contact shall include several disclosures regarding the use of the UIPIs. If the person fails to respond to the notification within six months after the second notification, the individual or entity would be required to delete all information regarding the person.

This bill would make it a misdemeanor to willfully and knowingly violate any of the confidentiality provisions of the bill. First and subsequent violations of the confidentiality provisions are punishable by an unspecified fine. Any contractor, agent or employee of the state who willfully violates provisions of the act will be terminated from state employment or service and permanently disqualified from rehire by the state. This bill also would authorize a cause of action for negligence or invasion of privacy or both, including reimbursement of attorney's fees, against any person or entity that violates restrictions on the use of biometric and personal information specified in the act.

Policy Considerations

This bill seeks to regulate uses of information both by government and by private industry. However, because of the differences between the two groups, perhaps separate statutory schemes should be tailored to the character of government versus industry.

Implementation Considerations

Under current state law, the FTB is responsible for administering and enforcing the California income tax laws. This duty includes the collection of income tax revenues and non-tax debts, such as child support and court ordered debt. This bill provides that a state or local agency could collect any information regarding UIPIs only if they first obtain the informed consent of that person or specific statutory authority permits and defines the strictly limited collection, retention, and use of UIPIs in the absence of informed consent. It is unclear whether existing laws that authorize the collection, retention, and use of taxpayer information satisfy the requirements for "specific statutory authority" established by the bill.

Under current department practice, social security numbers (SSNs) and taxpayer identification numbers (TPIDs) are collected by the department from various sources, including from the taxpayer and from agencies required to report financial information. The department also issues Personal Identification Numbers (PINs) for taxpayers using the electronic filing or the Telefile program. SSNs, TPIDs, PINs and financial information are used for compliance development, audit and collection. If this bill is intended to restrict the collection and use of SSNs, TPIDs and PINs and existing law is not adequate to avoid obtaining a taxpayer's informed consent for the

collection, retention, and use of such information, this bill would severely impede the state's ability to collect outstanding tax liabilities from non-compliant taxpayers.

Also, if FTB is required to seek permission of the taxpayer before collecting and using UIPIs or disclosing them to other agencies, several departmental programs would be severely hampered. If the department is required to contact and obtain permission from the individual, the costs of department programs would be increased, and many programs may become ineffective. As written, this bill could severely undermine the effectiveness of administration of the state's income tax enforcement programs. It is the department's understanding that this bill will be amended to apply only to medical information, which would resolve these concerns.

FISCAL IMPACT

Departmental Costs

If the department is required to seek taxpayer permission before collecting, retaining, and using information, this bill could significantly impact the department's costs. However, if amended to apply only to medical information, this bill would not impact the department's costs.

Tax Revenue Discussion

This bill could significantly impact the state's income tax revenues if use of confidential tax information is restricted. However, if amended to apply only to medical information, this bill would not impact revenues.

BOARD POSITION

Pending.